TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 965.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. THE GALLATIN NATIONAL BANK ET AL., PLAINTIFFS IN ERROR,

vs.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS IN THE CITY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

FILED JANUARY 13, 1877.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the court of appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the State of New York, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The People of the State of New York, ex rel. The Gallatin National Bank, and Frederick D. Tappin, Frederick W. Stevens, Henry Escher, Joseph W. Greene, and Matthew Armstrong, holders of shares in said bank, in behalf of themselves and such other shareholders as shall become parties and agree to be bound by these proceedings, plaintiffs, and the commissioners of taxes and assessments in the city of New York, defendants, wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, or wherein was
2 drawn in question the construction of a clause of the Constitution or statute of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution or statute, a manifest error hath happened, to the great damage of the said relators The Gallatin National Bank and others above named, as is said and as appears by their complaint: we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday in January next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of
3 the Supreme Court of the United States, this day of , in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the second circuit.

Allowed this fifth day of January, one thousand eight hundred and seventy-seven.

[SEAL.] S. E. CHURCH,
Chief Judge of the Court of Appeals of the State of New York.

(Indorsed:) Court of appeals of the State of New York. The People, &c., ex rel. The Gallatin National Bank & others, vs. The Commissioners of Taxes and Assessments in the city of New York. Writ of error. Lord, Day & Lord, attorneys, 120 Broadway, New York.

4 Court of appeals of the State of New York.

THE PEOPLE OF THE STATE OF N. Y. EX. REL. The Gallatin National Bank and others, plaintiffs in error,
vs.
THE COMMISSIONERS OF TAXES AND ASSESSMENTS in the city & co. of N. Y., defend'ts in error.

Know all men by these presents, that we, Adrian Iselin, jr., and Alexander H. Stevens, both of the city of New York, are held and firmly bound unto the above-named defendants in the sum of five hundred dollars, to be paid to the said obligees, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas the above-named plaintiffs have prosecuted their writ
5 of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judges of the court of appeals of the State of New York:

Now, therefore, the condition of this obligation is such, that if the above-named plaintiffs shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their said writ of error good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

ADRIAN ISELIN, JR.
ALEX. H. STEVENS.

Sealed and delivered, and taken and acknowledged, this 29 day of December, 1876, before me.

FRANKLIN B. LORD,
Notary Public, N. Y. City & Co.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Adrian Iselin, jr., and Alexander H. Stevens, being duly and severally sworn, depose and say, and each for himself deposes and
6 says, that he resides in the city of New York; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities and property by law exempt from execution.

ADRIAN ISELIN, JR.
ALEX. H. STEVENS.

Sworn to this 29th day of Dec., A. D. 1876, before me.

FRANKLIN B. LORD,
Notary Public, N. Y. City & Co.

I approve the within bond as to its amount, its form, and the sufficiency of the sureties.

WM. C. WHITNEY,
Counsel for the Corporation, per Cole.

N. Y., DEC.

(Endorsed :)

Approved as to amount, form, & manner of execution & sufficiency of sureties.

S. E. CHURCH,
C. J. Ct. Appeals.

I hereby certify that the foregoing is a true copy of the bond on file in this action in this office.

[SEAL.] F. S. PERRIN,
Deputy Clerk Court of Appeals of State of New York.

7 Court of appeals.

STATE OF NEW YORK, *ss*:

Pleas in the court of appeals, held at the capitol in the city of Albany, on the 19th day of December, in the year of our Lord one thousand eight hundred and seventy-six, before the judges of said court.

Witness the Hon. Sandford E. Church, chief judge, presiding.

E. O. PERRIN, *Clerk.*

Remittitur, Dec'r 19th, 1876.

8 THE PEOPLE EX REL. THE GALLATIN NATIONAL Bank and others, applts.,
vs.
THE COMMISSIONERS OF TAXES AND ASSESSMENTS in the city and county of New York, respdts.

Be it remembered that on the 2d day of December, in the year of our Lord one thousand eight hundred and seventy-six,

The People ex rel. The Gallatin National Bank and others, the appellants in this action, came here into the court of appeals, by Lord, Day & Lord, their attorneys, and filed in the said court a notice of appeal and return thereto from the order of the general term of the supreme court of the State of New York. And the commissioners of taxes, &c., the respondents in said action, afterwards appeared in said court of appeals by William C. Whitney corporation counsel.

Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

9 Whereupon the said court of appeals, having heard this cause argued by Mr. D. D. Lord, of counsel for the appellants, and by Mr. Hugh L. Cole, of counsel for the respondents, and, after due deliberation had thereon, did order and adjudge that the order of the general term of the supreme court appealed from in this action be, and the same is hereby, affirmed with costs. And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

10 Therefore, it is considered that the said order be affirmed with costs, as aforesaid.

And hereupon, as well as the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises are by the said court of appeals remitted into the supreme court of the State of New York, before the justice thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

F. S. PERRIN,
Dep. Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, Dec'r 19, 1876.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] F. S. PERRIN,
Dep. Clerk.

11 To the supreme court of the State of New York:

The petition of the Gallatin National Bank and Frederick D. Tappen, Frederick W. Stevens, Henry Escher, Joseph W. Greene, and Matthew Armstrong, holders of shares of stock in said bank, in behalf of themselves and such other shareholders as shall become parties and agree to be bound by these proceedings, respectfully shows:

That the said Gallatin National Bank is a national banking association, duly incorporated as such, and having its location and place of business in the city of New York.

That before June, 1865, the said bank was incorporated as a State bank, under and by virtue of the laws of this State, and under the name or title of the National Bank in the city of New York, with a capital of $1,500,000 invested as required by the laws of this State in relation to the capital of State banks, and subject only to such conditions, directions, and provisions as were in said laws contained.

That in June, 1865, the said bank gave up its organization as a State bank, and became re-organized as a national banking association under the name or style of the Gallatin National Bank in the city of New York.

The said re-organization was in conformity with the provisions of an act of Con'ress of the United States, passed 3d June, 1964, entitled "An act to provide a national currency secured by a pledge of United
12 States bonds, and to provide for the circulation and redemption thereof," together with the acts amendatory to the same, and in conformity also, as well as in reliance upon, the privileges and benefits of an act of the legislature of this State, passed 9th March, 1865, entitled "An act enabling the banks of this State to become associations for the purpose of banking under the laws of the United States."

And your petitioners further show that in order to avail themselves of the privileges and benefits allowed by said act, and to carry on business under such new organization, the said bank invested of its assets over five hundred and ninety thousand dollars in a purchase of bonds of the United States, and deposited the same with the Treasurer of the United States, with whom they have ever since remained, and have reserved from its earnings three hundred thousand dollars, or twenty per cent. of the amount of its capital.

Your petitioners show, that by reason of such reserve, the bank has, of necessity, a surplus over and above its capital, but that such surplus is made up entirely of the bonds and reserve which the said bank was required to hold by the act of Congress aforesaid.

Your petitioners further show, that by reason of such surplus the commissioners of taxes of the city and county of New York have notified the said bank of their intention to assess the said shares for taxation in excess of their par value; that thereupon, and before 30th April, 1876, the said bank, acting through its president, and in behalf of th said shareholders, objected to the assessment of said shares at any rate beyond their par value, and testified before the said commissioners to the matters contained in the sworn statement of their said president,

copies of which are hereto annexed, and marked A and B, and they gave also the notice, of which a copy is annexed, marked C.

13 Your petitioners show that notwithstanding the said notice and testimony the said commissioner' have assessed the shares at a valuation of $58 per share, of which the par value is $50; that such assessment is not included in the assessment of personal estate of the shareholders, even where such shareholders reside in the city and county of New York; that many of the shareholders do not reside in said city and county, nor even in the State of New York, while some are not residents or citizens of the United States.

Your petitioners further show that many of the said shareholders are liable for debts which would reduce, and in some case' extinguish, the said assessment, if the said shares were included in the valuation of their personal estate.

Your petitioners therefore show that said assessment is not in conformity with the acts of Congress before mentioned, nor with the laws of this State; that the taxation of the surplus imposes a tax on the said shares greater than is imposed on such other moneyed capital in the hands of citizens of the State, as is included in the valuation of their personal estate.

Also that such taxation is greater than is imposed on the shares of State banks, which are enabled to carry on business without a surplus above *above* their capital.

Also that such taxation is contrary to the provisions of the aforesaid act of 9th March, 1865, that taxation shall not exceed the par value of the shares; and that for other reasons the said assessment is erroneous and illegal; but your petitioners are informed and believe that said commissioners intend to adhere to their said assessment of said shares, and that such assessment will be confirmed, greatly to the injury of your petitioners, as well as the other shareholders of the said bank.

14 Your petitioners further show that the said shareholders are very numerous, residing in different and often distant localities, and that it is impracticable to include them all as relators in this proceeding.

Your petitioners therefore pray, in behalf not only of themselves but of such other shareholders as may desire to unite with them, that a writ of certiorari may be issued to said commissioners of taxes and assessments, returnable to this court according to law, requiring them to certify and return to this court all and singular their proceedings in the premises, and the papers and documents and other writings before them relating to the assessment of your petitioners, or of the shareholders of the said Gallatin National Bank, to the end that the same may be seen and inspected by this court, and that the errors aforesaid and all other errors of the said commissioners may be corrected according to law.

GALLATIN NAT. BANK, N. Y.,
F. D. TAPPEN, *Prest.*

F. D. TAPPEN,
For Myself and Other Petitioners.

CITY AND COUNTY OF NEW YORK, *ss:*

Frederick D. Tappen, being duly sworn, saith that he is the president of the Gallatin National Bank, and he is one of the petitioners above named; that he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge, except

as to such matters as are herein set forth on information and belief, and that as to such matters he believes the same to be true.

F. D. TAPPEN.

Sworn to before me this 29th day of June, 1876.

DANL. LORD, JR.,
Notary Public, City of N. Y.

15 A.

IN THE MATTER *of* THE GALLATIN NATIONAL BANK. } Before the commissioners of taxes.

STATE OF NEW YORK,
City and County of New York, ss:

On this twelfth day of February, 1876, duly appeared before the said commissioners Frederick D. Tappen, president of said bank, who, being duly sworn, testified that previous to June, 1865, the said bank was duly incorporated as a State bank with a capital of $1,500,000, in conformity with the statutes of this State.

That in June, 1865, the same was re-organized as a national banking association, in conformity with an act of Congress passed on the 3d June, 1864, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," and with the acts amendatory thereof.

That the said re-organization was made in conformity with as well as in reliance upon the provisions of an act of the legislature of this State, passed 9th March, 1865, entitled "An act enabling the banks of this State to become associations for the purpose of banking under the laws of the United States."

That the capital of the bank, previous to such re-organization, viz, $1,500,000, was continued as the capital after re-organization, but that, in accordance with the requirements of the said acts of Congress, as a condition-precedent to commencing the transaction of its business,

16 as well as to secure a circulation of $500,000, the said bank was obliged to invest $591,000 in bonds of the United States, (which were bought at above par,) and to deposit the same with the Treasurer of the United States, with whom they have ever since continued on deposit as required by said acts of Congress.

Deponent further saith that the said bank, in compliance with the requirements of the said acts of Congress, has reserved from its earnings the sum of $300,000, equivalent to 20 per cent. of its capital stock.

And deponent further saith that after deducting from the balance of assets of the bank, remaining after providing for its debts and liabilities, the reserve and the United States bonds above mentioned, and also the real estate at a valuation less than that at which it is assessed for taxation, the remainder would be less than the capital of the bank or the par values of its shares; or, in other words, that the said bank has no surplus capital beyond the amount so invested in United States bonds and the said reserve.

Deponent further saith, on information and belief, that the State banks are not required to reserve any portion of their earnings or to keep any portion of the same or of their capital invested in any securities rendering it necessary for them to retain a surplus, which in addition to said reserve the premium on the bonds of the United States deposited by

the deponent's bank as aforesaid has risen to over 20 per cent. beyond the par value thereof.

Deponent further saith that the annexed is a true statement of the persons owning stock in the said bank, of their places of residence, and of the number of shares belonging to each, so far as appears by the register of the bank, or so far as deponent has notice of the same; but deponent has no means of ascertaining with certainty that transfers of stock or of interests therein have not been made without being
17 entered on said register, for want of notice thereof to deponent or the officers of the bank.

F. D. TAPPEN.

Sworn to before me this 12th day of Feb., 1876.

GEO. H. ANDREWS,
Com. of T. & A.

B.

1876. The annual record of the assessed valuation of personal estate.

FIRST WARD.—GALLATIN NATIONAL BANK.

The value of each share of this bank did not, on the 8th day of January, exceed sixty-four dollars.

F. D. TAPPAN, *Pres.*

Sworn to before me this 21st April, 1876.

GEO. H. ANDREWS, *Com.*

RECAPITULATION.

Whole number of shares	30,000	
Par value of each share	$50	
Capital		$1,500,000
36 Wall street bank real estate	90,000	
N. Y. clearing-house	4,500	
Assets real estate	145,500	
	2,500	Cl'ring H.

18 C.

GALLATIN NATIONAL BANK.

NEW YORK, *April 28th*, 1876.

To the tax-commissioners of the city of New York:

DEAR SIRS: You will please take notice that the shareholders of the Gallatin National Bank do not admit the legality of the assessments made of their shares, but will insist that they shall not be taxed in excess of their par value. The grounds upon which they make this claim are set forth in the affidavits heretofore served upon you by the bank acting in their behalf.

Your obedient servant,

F. D. TAPPEN, *Pres.*

19 Pleas before the justices of the supreme court of New York, at a general term held at the county court-house, in the city of New York, on the day of October, 1876.

Present: Hon. Noah Davis, P. J., Hon. J. R. Brady, J., Hon. Charles Daniels, J.

THE PEOPLE, EX REL. THE GALLATIN NATIONAL BANK,
vs.
THE COMMISSIONERS TAXES AND ASSESSMENTS in the city and county of New York.

STATE OF NEW YORK, *ss:*

The people of the State of New York sent to the commissioners of taxes and assessments in the county of New York their writ of certiorari, close in these words, to wit:

The people of the State of New York to the commissioners of taxes of the city and county of New York, greeting:

Being informed in our supreme court, in and for the first district, that in assessing the shareholders for the Gallatin National Bank for the present year errors have been committed, to the prejudice of said shareholders, and willing for certain causes to be certified of your decisions, actions, and proceedings in the premises, and of the amount fixed
20 by you for such assessments, and of the statements, notices, and other writings before you in relation thereto:

We therefore command you that you certify and send to our supreme court of judicature, at the city-hall, in the city of New York, at a general term thereof, to be held on the thirtieth day of June inst., at the opening of the court on that day, all and singular the proceedings before you had in the premises, and all statements, notices, documents, and writings before you, and your actions, decisions, and proceedings in the premises, or in any manner relating thereto, with this writ, that we may thereupon cause to be farther done in the premises what shall be right and according to law.

Witness Noah Davis, chief-justice of our said court, at the city-hall, in the city of New York, this 29th day of June, eighteen hundred and seventy-six.

By the court.

WM. WALSH, *Clerk.*

At which day and place, before the justices as aforesaid, now come the said Gallatin National Bank, by Lord, Day & Lord, their attorneys, and the said commissioner' of taxes and assessments now here make returns to said writ in the words and figures following:

And now the said commissioners of taxes and assessments, by William C. Whitney, esq., counsel to the corporation, *and* make here return to the said writ, in the words and figures following, to wit:

To the supreme court of the State of New York:

The undersigned, commissioners of taxes and assessments, in
21 the city of New York, pursuant to the writ of certiorari hereto prefixed, respectfully certify and return:

That, between the dates fixed by law, the proper deputy tax-commissioner, under the direction and supervision of the commissioners, assessed and taxed the stockholders in the Gallatin National Bank on the value of their shares; and the commissioners included said shares in the valuation of the personal property of such stockholders in the assessment of taxes at the first ward of the city and county of New York, which is the ward where such bank is located, but that the said

commissioners did not assess said stockholders upon said shares at a greater rate than is assessed upon other monied capital in the hands of individuals in this State.

That on or about the 28th day of April, 1876, the commissioners received, from the president of the said bank, a notice that the shareholders did not admit the legality of said assessment, a copy of which is hereunto appended, marked "Schedule D."

That the said commissioners, in the first instance, assessed the said stockholders at the gross sum of $2,160,000; that the whole number of shares of stock in said bank is 30,000 shares, and that each share of stock was assessed at $72\frac{2}{100}$, and that this assessed valuation was entered in detail in the books called the "annual record of the assessed valuation of real and personal estate," which said books were kept in the office of the said commissioners, open for examination and correction from the second Monday of January, 1876, until the first day of May, 1876, and were, on the last-mentioned day, closed according to law.

That previous to and during the time said books were open for inspection the said commissioners did advertise the fact in the official journal, called the City Record, according to law.

22 That on or about the 12th day of February, 1876, the president of the Gallatin National Bank applied to the said commissioners to have the said assessed valuation corrected, which application is hereunto appended, marked "Schedule A;" and that, on or about the 21st day of April, 1876, the said president of the said bank presented another communication, which is hereunto appended, marked "Schedule B," which was an affidavit that the value of each share of this bank did not, on the 8th day of January, exceed $64, said 8th day of January being the second Monday in January, 1876.

That the said commissioners, with this information before them, proceeded to examine into the complaint of the said stockholders, and having adjudged the former assessment of the value of the said shares to have been erroneous, proceeded to cause the same to be corrected.

That the assessed valuation of the said shares of stock, as finally corrected and fixed, was the sum of $1,770,000, for the aggregate of 30,000 shares of said stock, and the assessed value of each share of stock was $59; that the said value of the said shares of stock was determined and assessed in the following manner:

The number of shares of stock, 30,000, was multiplied by the value of each share, as certified by the president of the bank, $64, which gave as a result the total value of the shares of stock, including real estate, viz, $1,920,000.

The assessed value of the real estate of the said bank was $150,000, which amount was not to be considered in determining the assessable value of said shares of stock.

That there was deducted from the value of each share such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank to the whole amount of the capital stock of said bank, thus:

23 30,000 shares, $150,000; 1 share, $5.00.

Deduct, therefore, from the assessed value of each share, to wit:	$64 00
This proportionate share of the value of real estate, to wit	5 00
And the result is the value of such share of stock as regulated by law	59 00

That, having in this manner determined and assessed the value of each share of said stock, the commissioners assessed each stockholder on this basis upon the whole number of shares of stock held by him according to a list furnished by the said bank according to law, as will more fully appear by reference to "Schedule C," hereunto appended.

That thereafter, to wit, on the first day of May, 1876, the said commissioners caused to be prepared from the said books of "Annual record of assessed valuations of real and personal estate," the assessment rolls for the several wards of the city of New York in due and legal form, and annexed to each of said rolls their certificate; that the same were correct in accordance with the entries in said books of record. And that afterwards, to wit, on the first Monday in July, 1876, the said commissioners delivered the said rolls thus certified to the supervisors of the city and county of New York.

In witness whereof we have hereunto set our hands and seals this 25th day of October, 1876.

JOHN WHEELER, [L. S.]
JOHN W. RAYMOND, [L. S.]
GEO. W. ANDREWS, [L. S.]
Commissioners of Taxes and Assessments.

24 A.

IN THE MATTER *of* THE GALLATIN NATIONAL BANK. } Before the commissioner of taxes.

STATE OF NEW YORK,
City and County of New York, ss:

On this twelfth day of February, 1876, duly appeared before the said commissioners Frederick D. Tappan, president of said bank, who, being duly sworn, testified that previous to June, 1865, the said bank was duly incorporated as a State bank, with a capital of $1,500,000, in conformity with the statutes of this State.

That in June, 1865, the same was re-organized as a national banking association, in conformity with an act of Congress passed on the 3rd June, 1864, entitled, "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," and with the acts amendatory thereof.

That the said organization was made in conformity with, as well as in reliance upon, the provisions of an act of the legislature of this State passed 9th March, 1865, entitled, "An act enabling the banks of this State to become associations for the purpose of banking under the laws of the United States."

That the capital of the bank previous to such re-organization, viz, $1,500,000, was continued as the capital after re-organization, but that in accordance with the requirements of the said acts of Congress,
25 as a condition-precedent to commencing the transaction of its business, as well as to secure a circulation of $500,000, the said bank was obliged to invest $591,000 in bonds of the United States, (which were bought at above par,) and to deposit the same with the Treasurer of the United States, with whom they have ever since continued on deposit, as required by said acts of Congress.

Deponent further saith that the said bank, in compliance with the requirements of the said acts of Congress, has reserved from its earnings the sum of $300,000, equivalent to 20 per cent. of its capital stock.

And deponent further saith that after deducting from the balance of assets of the bank remaining after providing for its debts and liabilities the reserve and the United States bonds above mentioned, and also the real estate at a valuation less than that at which it is assessed for taxation, the remainder would be less than the capital of the bank or the par values of its shares; or, in other words, that the said bank has no surplus capital beyond the amount so invested in United States bonds and the said reserve.

Deponent further saith, on information and belief, that the State banks are not required to reserve any portion of their earnings or to keep any portion of the same or of their capital invested in any securities rendering it necessary for them to retain a surplus, which, in addition to said reserve, the premium on the bonds of the United States deposited by deponent's bank as aforesaid, has risen to over 20 per cent. beyond the par value thereof.

Deponent further saith, that the annexed is a true statement of the persons owning stock in the said bank, of their places of residence, and of the number of shares belonging to each, so far as appears by the register of the bank, or so far as deponent has notice of the same; but deponent has no means of ascertaining with certainty that
26 transfers of stock or of interest therein have not been made without being entered on said register, for want of notice thereof to deponent or the officers of the bank.

(Signed) F. D. TAPPEN.

Sworn before me this 12th day of February, 1876.

EDWIN F. COREY, JR,
Notary Public.
GEORGE H. ANDREWS,
Comr. T. & A.

SCHEDULE B.

Gallatin National Bank.

The value of each share of this bank did not on the 8th day of January exceed sixty-four dollars.

(Signed) F. D. TAPPEN, *Pres.*

Sworn to before me this 21st April, 1876.

GEO. H. ANDREWS,
Comr. T. & A.

27 SCHEDULE C.

Name of shareholder.	Residence.	No. of shares.	Assessed valuation.
Frederick D. Tappen	New York	426	$25,434
Frederick W. Stevens	New York	100	5,900
Henry Escher	Zurich, Switzerland	40	2,360
Joseph W. Greene	Brooklyn, L. I.	100	5,900
Matthew Armstrong	New York	100	5,900

SCHEDULE D.

GALLATIN NATIONAL BANK,
New York, April 28th, 1876.

To the tax-commissioners of the city of New York:

DEAR SIRS: You will please take notice that the shareholders of the Gallatin National Bank do not admit the legality of the assessment made of their shares, but will insist that they shall not be taxed in excess of their par value. The grounds upon which they make this claim are set forth in the affidavits heretofore served upon you by the bank acting in their behalf.

Your obedient servant,

F. D. TAPPEN,
President.

28 Whereupon, and due deliberation being thereupon had, it seems to this court that the proceedings of the commissioners of taxes and assessments in and about the aforesaid matter are each and all manifestly good and valid in the law.

Therefore, it is adjudged that all and singular the proceedings had and taken by the said commissioners of taxes and assessments of the city and county of New York, in and about the assessments for the purposes of taxation on the shareholders of the capital stock of the said The Gallatin National Bank be, and the same hereby are, in all things affirmed, said writ of certiorari to the contrary thereof anywise notwithstanding; and it is further adjudged that said commissioners of taxes and assessments recover against the said Gallatin National Bank and others, the relators herein, the sum of $68.00, their costs and charges, paid out in and about their defence in this proceeding, and that the said commissioners of taxes and assessments, relators herein, have execution therefor.

(Endorsed:) Filed Nov. 29, 1876, 1 h. 31 m.

29 At a general term of the supreme court of the State of New York, held at the court-house, in the city of New York, on the 29th day of November, A. D. 1876.

Present, Hon. Noah Davis, P. J.; Hon. John R. Brady, Hon. Charles Daniels, JJ.

THE PEOPLE, &C., EX REL. THE GALLATIN National Bank and others,
vs.
THE COMMISSIONERS OF TAXES AND ASSESSments in the city and county of New York.

The people of the State of New York, having heretofore sent to the commissioners of taxes and assessments in the county of New York their writ of certiorari close, and on the return of said writ the said relators, The Gallatin National Bank and others, having appeared by Daniel D. Lord, their counsel, and the said respondents, The Commissioners of Taxes and Assessments in the City and County of New York, having appeared by William C. Whitney, esq., their counsel, and made their return to the said writ, and the matter having been argued before the general term of this court by counsel for the respective parties:

Now, on reading and filing the petition on which said writ was
30 granted, and the said writ and the return thereto, and after hearing counsel for the respective parties, and due deliberation hav-

ing been had, and it appearing to the court that the proceedings of the commissioners of taxes and assessments in and about the matters referred to in said writ are each and all manifestly good and valid in the law,

On motion of William C. Whitney, esq., counsel to the corporation,

It is ordered and adjudged that all and singular the proceedings had and taken by the said commissioners of taxes and assessments in the city and county of New York in and about the assessments for the purposes of taxation on the shareholders of the capital stock of the said The Gallatin National Bank be, and the same hereby are in all things affirmed, said writ of certiorari to the contrary in anywise notwithstanding; and it is further ordered that said commissioners of taxes and assesements recover against the said Gallatin National Bank and others the sum of sixty-eight dollars, their costs and charges paid out in and about their defence in this proceeding, and that the said commissioners of taxes and assessments, respondents herein, have execution therefor.

A copy.

WM. WALSH, *Clerk.*

31

Supreme court, first department.

THE PEOPLE, EX REL. THE GALLATIN NATIONAL BANK and others,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS in the city and county of New York.

Please take notice that the Gallatin National Bank and others, the relators above named, appeal to the court of appeals from the order of the general term of this court, entered herein November 29th, 1876, and also from the judgment entered herein November 29th, 1876, for sixty-eight dollars costs, and that said relators appeal from each and every part of said order and judgment.

Dated New York, November 29th, 1876.

Yours, &c.,

LORD, DAY & LORD,
Attys. for Relators, Appellants.

To WILLIAM C. WHITNEY, Esq.,
Counsel for the Corporation.
WILLIAM WALSH, Esq.,
County Clerk.

(Endorsed:) Filed December 1, 1876.

STATE OF NEW YORK,
City and County of New York, ss:

I, William Walsh, clerk of the supreme court in and for said county, do hereby certify that the foregoing consists of certified copies of the notice of appeal and the judgment roll on file in my office, together with the order appealed from.

32 In witness whereof I have hereunto set my hand and affixed my official seal this first day of December, A. D. 1876.

[L. S.] WM. WALSH, *Clerk.*

Supreme court, first department, general term, November, 1876.

THE PEOPLE, ON THE RELATION OF THE GALLATIN NATIONAL BANK, FREDERICK D. TAPPEN, et al.,
against
THE COMMISSIONERS OF TAXES AND ASSESSMENTS, &c.

Before Noah Davis, P. J., John R. Brady, Charles Daniels, J. J.

Writ of certiorari to inquire into the validity of a tax imposed on shares of the Gallatin National Bank.

D. D. Lord for relators.

Hugh L. Cole for respondents.

BRADY, J.

The actual value of the shares of the relators' stock is the proper standard in assessing the tax to be paid.

The par value does not control laws 1866, vol. 2d, p. 1647, 1 Rev. Stat., 393, § 17. It was the duty, therefore, of the respondents to ascer-
33 tain and act upon the true value of the stock, as they have done. People vs. The Assessors of Albany City, 2 Hun., 583. The provision that the tax so assessed shall not exceed the par value in the enabling act of Congress of 9th March, 1865, does not affect the principle. The impost may be upon a sum exceeding the par value when that sum represents the actual value of the share.

The precise question is settled by the highest authority. Hepburn vs. The School Directors of the Burrough of Carlisle, Pennsylvania, 23 Wallace Rep., 480. The only restriction is that the share shall not be taxed at a greater rate than is imposed upon other moneyed capital in the hands of individuals of this State. This limitation is not affected by the fact that a part of the capital stock of the bank is invested in bonds of the United States, (Van Allen vs. The Assessors, 3 Wall., 573; The People vs. The Comm'rs, 4 Wall., 244,) or by the fact that the bank is obliged by law to accumulate a reserve. The respondents, in determining the tax to be imposed, adopted a standard of value founded upon the statement of the relators, president, and ascertaining by deducting from such value the proportionate share of the assessed value of the relators' real estate. The reserve, which is a part of the capital of the bank, and the surplus as well, were properly included in the estimate of value. Both contribute to the value of the shares, and are necessarily, therefore, constituent elements of such value.

The interest of the shareholder entitles him to participate in the net profits earned by the bank in the employment of its capital during the existence of its charter, in proportion to the number of his shares, and, upon the dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts.
34 This is a distinct independent interest or property held by the shareholder like any other property that may belong to him, and we add, of course, subject to taxation, per Nelson, J., in cases in 3rd and 4th Wallace, supra. It is quite apparent from these adjudications and the principles enunciated by them, that the respondents have acted properly, and that the writ must be dismissed with costs.

35 Court of appeals.

THE PEOPLE, EX REL. THE GALLATIN NATIONAL BANK et al., applts.,
agst.
THE COMMISSIONERS OF TAXES & ASSESSMENTS in the city & county of New York, respts.

D. D. Lord for applts.
Hugh L. Cole for respts.

EARL, J.

The relators complain that the defendants have assessed the shares in the bank at their actual value instead of their par value, & claim that this mode of assessment is erroneous.

The act of Congress in reference to the organization of national banks was passed June 3, 1864. It conferred certain privileges upon the banks to be organized, and regulated the mode in which they
36 should do their business, and the terms upon which they should enjoy the important privilege of issuing circulating notes. It also provided how State banks could be converted into national banks, and that the taxation of the shares of national banks should not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens, or is imposed upon the shares in any of the State banks in the same State.

In 1865 (chap. 97) the legislature passed an act to enable State banks to avail themselves of the act of Congress and become national banks, & prescribed the mode in which State banks could be converted into national banks; and for the purpose of bringing our statutes as to taxation into harmony with the requirement of the act of Congress, section ten provided that all the shares in both State & national banks
37 should be included in the valuation of the personal property of the share-owners, "but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals of this State, provided that the tax so imposed upon such shares shall not exceed the par value thereof."

The Gallatin National Bank was, prior to 1864, a State bank, and it was converted into a national bank under the act of Congress and the act of 1865, above referred to.

The first claim made by the relators in this action is that the act of 1865 gave them a contract that the shares in the bank should not be assessed for more than their par value. A complete answer to this claim is that the act, so far as it provided for the taxation of national banks, has been declared unconstitutional & void. (Van Allen v. The Assessors, 3 Wallace, 573; The People v. The Commissioners, 4 Wal-
38 lace, 244.) Hence, if the legislature attempted to make a contract, it failed; and a void law certainly could not deprive future legislatures of the right to exercise all their powers on the subject of taxation of banks. But the act does not purport to make a contract. It simply enabled State banks to become national banks, & provided by a general law how the bank's shares should be taxed. This law the legislature could alter, and it was deprived of some of its rightful power over the subject of taxation. It is never to be assumed that the State has, by any act, fettered its power of taxation in the future, unless it appears with irresistible clearness that the enactment was intended to be in the nature of a private contract, as distinguished from a mere act

of general legislation. (The People v. Roper, 35 N. Y., 629; The
39 People v. The Commissioners, &c., 47 N. Y., 501; Rector, &c., of Christ Church v. County of Philadelphia, 24 How., U. S., 300.) The legislature did not, therefore, interfere with any of the constitutional rights of the relators when it enacted, by section 1 of chap. 761 of the laws of 1866, p. 1647, that "No tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this State or of the United States; but the stockholders in such banks or banking associations shall be assessed & taxed on the value of their shares of stock therein."

The assessors in the discharge of their duties under this act must ascertain the values of shares in banks, and to that end they must take into consideration everything that gives value to shares, the surplus & the circumstances under which it exists, the franchises & advan-
40 tages & disadvantages of the bank, and all the other circumstances, and when they thus ascertain the value of the shares, such value is to be the basis of assessment & taxation.

It appears in this case that the defendants assessed the shares in the bank at their value as required by the statute. The par value of the shares is $50, and in the first place the defendants assessed each share at $72.02. The relators subsequently appeared before the defendants to complain of the assessment and have it reduced; and the utmost they claimed as to the value of their shares was that it did not exceed $64 per share, and the defendants then reduced their assessment $59 per share, the value on a basis of $64 per share after deducting the value of real estate owned by the bank.

This system of taxing bank shares is in entire harmony with
41 that of taxing other personal property. The revised statutes, (1 R. S., 393, § 17,) provide that all personal estate "shall be estimated & assessed by the assessors at its full & true value, as they would appraise the same in payment of a just debt due from a solvent debtor." This provision requires the assessment to be for the "full and true value." And then, that there may be no mistake or evasion of this duty, it provides a guide which will in all cases give the full value, to wit, what the same would be worth in the payment of a just debt to a creditor entitled to and able to procure the cash for his debt. This basis of assessment is really the cash value. As I understand it, such was the assessment which is complained of in this case.

It is, however, further claimed there is an unjust discrimination
42 against national banks, because State banks can divide up all their surplus, & national banks are required to keep on hand & accumulate a portion of their surplus.

I cannot perceive the force of this claim. If a State bank divides up its surplus it has not got it to use, and it may be taxed in some form in the hands of the shareholders who have received it. While a national bank is required to keep some of its surplus, & to deposit a certain portion of its capital in bonds with the Comptroller of the Currency, it can in certain ways use its surplus, and it receives interest upon its bonds so deposited, and it has the advantage of a circulation of notes, and all the other advantages which the laws of Congress give such banks. Who shall say that a national bank is at any disadvantage as compared with State banks? It is generally supposed that they have a
43 substantial advantage over the latter. But, however that may be, all these circumstances were before the defendants when they fixed the value of the shares, and as long as they did not take an improper basis or violate any law, we cannot interfere with their deter-

minaton. In accordance with these views are the cases of People v. The Assessors of Albany, 2 Hun., 583; and Hepburn v. The School Directors, 23 Wallace, 480.

Having given careful consideration to all the views urged upon us by the learned counsel for the relators, we have reached the conclusion that the judgment must be affirmed.

All concur.

A copy.

H. E. SICKELS,
Reporter S. C.

(Indorsed:) The People ex rel. The Gallatin National Bank agst. The Commissioners of Taxes, &c., of N. Y. Opinion. Earl, J. Fees, $2.25.

44 By the honorable Sanford E. Church, chief judge of the court of appeals of the State of New York, to the commissioners of taxes and assessments in the city and county of New York, defendants:

Whereas the people of the State of New York, on the relation of the Gallatin National Bank and Frederick D. Tappen, Frederick W. Stevens, Henry Escher, Joseph W. Greene, and Matthew Armstrong, holders of shares in said bank, on behalf of themselves and such other shareholders as shall become parties and agree to be bound by these proceedings lately issued out of the Supreme Court of the United States, a writ of error directed to the court of appeals of the State of New York, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court before the judges thereof, between the said plaintiffs and you, the said defendants, a manifest error hath happened, to the great damage of the said relators, The Gallatin National Bank and others above named; and whereas, for the correction of that error in due manner, said writ has been issued, returnable at the Supreme Court of the United States, at the city of Washington, on the second Monday of January next: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the said second Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Albany the fifth day of
45 January, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the hundred and first.

[SEAL.]

S. E. CHURCH,
Chief Judge Court of Appeals of the State of New York.

Due, timely, and sufficient service of within citation is admitted.

WM. C. WHITNEY,
Corporation Counsel.

JAN'Y 8, 1876.

(Indorsed:) Supreme Court of the U. S. The People of the State of N. Y., ex rel. The Gallatin National Bank and others, plff. in error, vs. The Commissioners of Taxes and Assessments in the city of New York, defts. in error. Citation. D. D. Lord, Day & Lord, attorney for plff. in error, 120 Broadway, New York.

STATE OF NEW YORK,
COURT OF APPEALS, CLERK'S OFFICE,
Albany, January 5, 1877.

The answer of the judges of the court of appeals of the State of New York, in the within writ named, doth certify under the seal of the said court to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof mention is made in said writ, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court.

[SEAL.] F. S. PERRIN,
Deputy Clerk of the Court of Appeals of the State of New York.

(Indorsement on cover:) No. 965. The People of the State of New York ex rel. The Gallatin National Bank & others, plaintiffs in error, vs. The Commissioners of Taxes & Assessments in the city of New York. New York ct. of appeals. Filed 13 January, 1877.

EVENING POST STEAM PRESSES, 208 Broadway, cor. Fulton St., N. Y.

Supreme Court

OF THE UNITED STATES.

THE PEOPLE, *ex rel.*, GALLATIN National Bank, Fred D. Tappen and others, shareholders, Appellants,

against

THE COMMISSIONERS OF TAXES AND ASSESSMENTS, Respondents.

Brief for Relators, Appellants.

965

STATEMENT.

Appeal from order of the Court of Appeals, of the State of New York, affirming a judgment of General Term, First Department, quashing writ of *certiorari* for correction of tax.

The writ was issued 29th June, 1876, to correct an assessment of shares in a national bank beyond their par value.

The return shows that the relator's bank was first incorporated under the general banking law. That it

surrendered its charter in order to effect a new organization as a national banking association, pursuant to an act of Congress, passed June 3d, 1864, and an act of the Legislature of this State passed 9th March, 1865, chapter 97.

The Act of Congress contains the following provisions:

Sec. 16 requires every banking association before commencing business to transfer to the Treasurer of the United States, United States bonds to an amount not less than $30,000, nor less than one-third of the capital paid in, to be retained until otherwise disposed of pursuant to the act.

Sec. 33 provides that every association "before the declaration of a dividend, shall carry one-tenth part of its net profits of the preceding half year to its surplus fund, until the same shall amount to twenty per centum of its capital stock."

Sec. 41, which alone authorizes taxation of shares, provides *inter alia*, that the same shall not exceed the rate imposed upon the shares in any banks organized under the authority of the State where such association is located.

The State law of March, 1865, commonly called the Enabling Act, § 10, authorizes the taxation of shares in State banks which have organized as national banks under said act, "*but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals of this State provided that the tax so imposed shall not exceed the par value thereof.*"

1 Rev. Stat., 393, § 17, provides that all real and personal estate liable to taxation shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor."

An act of 1866, chap. 761, passed after relators had reorganized as a national bank, provides as follows: Sec. 1. No tax shall hereafter be assessed upon the capital of any bank or banking association organized

under the authority of this State, or of the United States, but the stockholders in such banks and banking associations shall be assessed and taxed upon the value of their shares of stock therein. It also repeals §10 of the act of March, 1865.

The capital of the bank is $1,500,000, divided into 30,000 shares of $50 each.

It has reserved from profits, as required by sec. 38 of the act of Congress, $300,000. It holds also on deposit with the Treasurer of the United States, as required by sec. 16 of said act, U. S. bonds of the par value of $591,000, on which the premium, estimated at twenty per cent., would be $118,200, so that the bank has, in addition to its capital, a surplus of $418-200.

The commissioners having signified their intention to tax this surplus, the president of the bank made a statement showing the above to be its condition, making the capital and surplus to be $1,918,200, which, on a division, would make each share $63.60, but as the government bonds were liable to daily and almost hourly fluctuation, and so might slightly exceed the estimate, he made affidavit that the value of each share did not exceed $64.

The commissioners thereupon assumed $64 as the value of each share, deducting $5 per share as the proportion of the assessed value of the bank's real estate left $59, which they took as the valuation, and upon which the tax has been imposed.

On a hearing at the November General Term of the N. Y. Supreme Court the writ was ordered to be quashed, with costs.

The relators appealed from this judgment to the Court of Appeals, where the judgment below was affirmed.

For opinions see Appendix.

SUPREME COURT,

FIRST DEPARTMENT—GENERAL TERM,

November, 1876.

THE PEOPLE ON THE RELATION OF the Gallatin National Bank, Frederick D. Tappen, *et al.*,

against

THE COMMISSIONERS OF TAXES AND Assessments, &c.

Before NOAH DAVIS, P. J.
JOHN R. BRADY,
CHARLES DANIELS, J. J.

Writ of *certiorari* to inquire into the validity of a tax imposed on shares of the Gallatin National Bank.

D. D. LORD,
For Relators.

HUGH L. COLE,
For Respondents.

BRADY, J.

The actual value of the shares of the relators' stock is the proper standard in assessing the tax to be paid.

The par value does not control Laws 1866, vol 2d, p. 1647, 1 Rev. Stat. 393, § 17. It was the duty, therefore, of the respondents to ascertain and act upon the true value of the stock, as they have done. People *vs.* The Assessors of Albany City, 2 Hun., 583. The pro-

vision that the tax so assessed shall not exceed the par value in the enabling act of Congress of 9th March, 1865, does not affect the principle. The impost may be upon a sum exceeding the par value when that sum represents the actual value of the share.

The precise question is settled by the highest authority, Hepburn *vs.* The School Directors of the Burrough of Carlisle, Pennsylvania, 23 Wallace, Rep. 480. The only restriction is that the share shall not be taxed at a greater rate than is imposed upon other moneyed capital in the hands of individuals of this State. This limitation is not effected by the fact that a part of the capital stock of the bank is invested in bonds of the United States, (Van Allen *vs.* The Assessors, 3 Wall., 573, The People's *vs.* The Comm'rs, 4 Wall., 244) or by the fact that the bank is obliged by law to accumulate a reserve. The respondents, in determining the tax to be imposed, adopted a standard of value founded upon the statement of the relators, President, and ascertaining by deducting from such value the proportionate share of the assessed value of the relators' real estate. The reserve, which is a part of the capital of the bank, and the surplus as well, were properly included in the estimate of value. Both contribute to the value of the shares and are necessarily therefore constituent elements of such value.

The interest of the shareholder entitles him to participate in the net profits earned by the bank in the employment of its capital during the existence of its charter, in proportion to the number of his shares, and upon the dissolution or termination, to his proportion of the property that may remain of the corporation after the payment of its debts. This is a distinct independent interest or property held by the shareholder like any other property that may belong to him, and we add, of course, subject to taxation, per Nelson J. in cases in 3d and 4th, Wallace *supra*. It is quite apparent from these adjudications and the principles enunciated by them, that the respondents have acted

properly, and that the writ must be dismissed, with costs.

COURT OF APPEALS.

THE PEOPLE EX REL. THE GALLATIN NATIONAL BANK ET AL.,
Appellants,

agst.

THE COMMISSIONERS OF TAXES AND Assessments in the City and County of New York,
Respondents.

D. D. LORD, for Appellants.

HUGH L. COLE, for Respondents.

EARL, J.:

The relators complain that the defendants have assessed the shares in the bank at their actual value, instead of their par value, and claim that this mode of assessment is erroneous.

The act of Congress, in reference to the organization of national banks was passed June 3, 1864. It conferred certain privileges upon the banks to be organized, and regulated the mode in which they should do their business, and the terms upon which they should enjoy the important privilege of issuing circulating notes. It also provided how State banks could be converted into national banks, and that the taxation of shares of national banks should not be at a greater rate than is assessed upon other moneyed capital in

the hands of individual citizens, or is imposed upon the shares in any of the State banks in the same State.

In 1865 (chap. 97), the Legislature passed an act to enable State banks to avail themselves of the act of Congress, and become national banks, and prescribed the mode in which State banks could be converted into national banks; and for the purpose of bringing our statutes, as to taxation, into harmony with the requirement of the act of Congress, section ten provided that all the shares in both State and national banks should be included in the valuation of the personal property of the shareowners, "but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals of this State; provided that the tax so imposed upon such shares shall not exceed the par value thereof.

The Gallatin National Bank was, prior to 1864, a State bank, and it was converted into a national bank under the act of Congress, and the act of 1875, above referred to.

The first claim made by the relators in this action is that the act of 1865 gave them a contract that the shares in the bank should not be assessed for more than their par value. A complete answer to this claim is that the act, so far as it provided for the taxation of national banks, has been declared unconstitutional and void. (Van Allen *v.* The Assessors, 3 Wallace 573, The People *v.* The Commissioners, 4 Wallace, 244.) Hence if the Legislature attempted to make a contract, it failed, and a void law certainly could not deprive future Legislatures of the right to exercise all their powers on the subject of taxation of banks.

But the act does not purport to make a contract. It simply enabled State banks to become national Banks, and provided by a general law how the banks' shares should be taxed. This law the Legislature could alter, and it was deprived of none of its rightful power ver the subject of taxation.

It is never to be assumed that the State has by any Act fettered its power of taxation in the future, unless it appears with irresistible clearness that the enactment was intended to be in the nature of a private contract as distinguished from a mere act of general legislation. (The People *v.* Roper, 35 N. Y., 629; The People *v.* The Commissioners, &c., 47. N. Y. 501; Rector, &c., of Christ Church *v.* County of Philadelphia, 24 How. U. S., 300.)

The Legislature did not therefore interfere with any of the constitutional rights of the relators when it enacted by section 1, of chapter 771, of the Laws of 1866, that "no tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this State, or of the United States, but the stockholders in such banks or banking associations shall be assessed and taxed on the value of their shares of stock therein."

The assessors, in the discharge of their duties under this act, must ascertain the values of shares in banks, and to that end they must take into consideration everything that gives value to shares, the surplus and circumstances under which it exists, the franchises and advantages and disadvantages of the bank, and all the other circumstances, and when they thus ascertain the value of the shares, such value is to be the basis of assessment and taxation.

It appears in this case that the defendants assessed the shares in the bank at their value as required by the statute. The par value of the shares is $50, and in the first place, the defendants assessed each share at $72.02. The relators subsequently appeared before the defendants to complain of the assessment, and have it reduced; and the utmost they claimed as to the value of their shares was that it did not exceed $64 per share, and the defendants then reduced their assessment to $59 per share—the value on a basis of $64 per share after deducting the value of real estate owned by the bank.

This system of taxing bank shares is in entire harmony with that of taxing other personal property. The Revised Statutes (1 R. S., 393, § 17), provide that all personal estate "shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor." This provision requires the assessment to be for the "full and true value," and then, that there may be no mistake or evasion of this duty, it provides a guide which will in all cases give the full value, to wit, what the same would be worth in the payment of a just debt to a creditor entitled to and able to procure the cash for his debt. The basis of assessment is really the cash value. As I understand it, such was the assessment which is complained of in this case.

It is, however, further claimed that there is an unjust discrimination against national banks, because State banks can divide up all their surplus, and national banks are required to keep on hand and accumulate a portion of their surplus.

I cannot perceive the force of this claim. If a State bank divides up its surplus, it has not got it to use, and it may be taxed in some form in the hands of the shareholders who have received it. While a national bank is required to keep some of its surplus and to deposit a certain portion of its capital, in bonds, with the Comptroller of the Currency, it can, in certain ways, use its surplus, and it receives interest upon its bonds so deposited, and it has the advantage of a circulation of notes and all the other advantages which the laws of Congress give such banks. Who shall say that a national bank is at any disadvantages as compared with State banks? It is generally supposed that they have a substantial advantage over the latter. But however that may be, all these circumstances were before the defendants when they fixed the value of the shares, and as long as they did not take an improper

basis or violate any law, we cannot interfere with their determination.

In accordance with these views are the cases of People *v.* The Assessors of Albany, 2 Hun., 583, and Hepburn *v.* The School Directors, 23 Wallace, 480.

Having given careful consideration to all the views urged upon us by the learned counsel for the relators, we have reached the conclusion that the judgment must be affirmed.

"All concur."

A copy.

H. E. SICKELS,
Reporetr per C.

POINTS.

First.

The surrender by the Gallatin Bank of its original charter and its reorganization under the National Bank Law, in conformity with the enabling act, formed a contract with the State, by one provision of which the taxation on its shares was limited to their par value, and this contract is as much protected by Art. 10 of the Constitution of the United States, as are private contracts between individual citizens.

4 Pet., 514, Prov. Bk. *v.* Billings.
3 How., 133, Gordon *v.* Tax Court.
16 How., 369, Piqua Bk. *v.* Knoop.
16 How., 436, Ohio L. I. & Co. *v.* De Bolt.
1 Black, 436, Jefferson Bk. *v.* Skelly.
8 Wallace, 435, Home &c. *v.* Rouse.
8 Wallace, 435, Wash. Un. *v.* Rouse.

These decisions fully establish the validity of legislative contracts.

In the last two there was some difference of opinion as to whether a legislature could bind its successors in a matter of such vital importance as taxation, but this question has been since decided in the affirmative.

16 Wallace, 244, Humphrey *vs.* Peques.

Mr. Justice Hunt, delivering the opinion of the court, says: "Another question is raised, to wit: That a Legislature does not possess the power to grant to a corporation a perpetual immunity from taxation. It is said that the power of taxation is amongst the highest powers of a sovereign State; that its exercise is a political necessity, without which the State must cease to exist, and that it is not competent for one legislature to bind its successors to compass the death of the State. It is too late to raise this question in this court. It has been held that the Legislature has the power to bind the State in relinquishing its power to tax a corporation. It has been held that such a provision in the charter of the corporation constitutes a contract which the State may not subsequently impair. These doctrines have been reiterated and reaffirmed so recently as the year 1871, in an opinion delivered by Mr. Justice Davis, in the case of the Wilmington Railroad *v.* Reed. They must be considered as settled in this court."

See Opinion, p. 249.

92 U. S. Rep., 665, Cent. R. R. *v.* Georgia.

Mr. Justice Strong, delivering the opinion, says: "It is not denied that by the provisions of the charter of 1833, amended in 1835, and accepted by the company, a contract was made that the company should not be taxed higher than one-half of one per cent. upon its net income; nor is it denied that the protection thus promised was as perpetual as the existence of the company itself."

Second.

The Court of Appeals decided that the Enabling Act did not form a contract, for two reasons:

1. That it was declared void by this court; and,

2. Because it was a measure of general and public legislation, and therefore not intended to give more than a temporary right, revocable at the discretion of the State.

The first point is supposed to be sustained by the decision of this court in Van Allen *v.* Assessors, 3 Wallace, 573, and People *v.* Com'rs, 4 Wall, 244, the second by the case of Rector, &c. Christ Church *v.* Philadelphia, 24 How., 300; followed in the State of New York by People *v.* Roper, 35 N. Y., 629; People *v.* Commrs. Taxes, 47 N. Y., 501.

Third.

These decisions cited in support of the revocable nature of exemptions are based, not exclusively on the character of the legislation as public or private, but also on the character of the concession, as voluntary and spontaneous or as given in return for a consideration received by the State.

In the Rector, Church Wardens, &c., *vs.* Philadelphia, Mr. Justice Campbell delivering the opinion of this court, says: "This concession of the Legislature was spontaneous, and no service or duty or other remunerative condition was imposed on the corporation, it belongs to the class of *privilegia favorabilia.* It attached only to such property as belonged to the corporation, and while it remained as its property; but it is not a necessary implication from these facts that the concession is perpetual, or designed to continue during the corporate existence."

In People *vs.* Commissioners of Taxes, N. Y., 47 N. Y., 501, the New York Court of Appeals, following very closely the language of Mr. Justice Campbell, say: "The Act of 1822, which enacted that no property of the New York Hospital should be subject to be taxed by virtue of any law of this State, did not constitute a contract, but was a spontaneous concession by the Legislature, not connected with any service or duty imposed upon the corporation. It was therefore, subject to modification or repeal."

These two cases are only the application to legislative contracts of principles governing contracts between individuals.

In People *vs.* Roper, 35 N. Y., 629, the exempting law was held repealable, not only because it was without consideration, but also because it was contained in an act of general legislation.

The law was a statute for regulation of the militia, and exempted such persons as should become members of uniformed companies from taxation on $500 of property.

The court held that the service, in consideration of which the privilege was given, was one to which the parties were subject as citizens of the State, and therefore could not form the consideration for a contract, and also, that an act for the regulation of military duty was one of a public character, which was always understood to be capable of repeal, if required by the public necessities or convenience.

In this case, the court state very clearly the distinction between a privilege granted in such an act, and an exemption such as contended for in the case at bar. They say (p. 633), "in a representative democracy, the right of taxing the citizens is an inseparable incident of popular sovereignty. It is true, that the State cannot tax property or securities exempted by an authority to which it is itself subordinate. It is true also, that for adequate considerations, *and in the exercise of*

its general authority, it may invite investments in a particular description of property for the benefit of the State, by stipulating for its exemption in the hands of the holders from assessment as a subject of general taxation."

These decisions do not, in any way, disturb the authority of the cases before cited.

Nor do they affect the rights of the relators, unless it can be made to appear that the Enabling Act was a measure of general legislation, or that the limitation of the tax was voluntary and without consideration.

Fourth.

The limitation of tax contained in the Enabling Act was not a voluntary concession, nor could it become available without meritorious and ample considerations given in return.

Previous to its new organization as a national banking association, the Gallatin Bank had been carrying on business under a charter from the State, which left it at liberty to invest its entire capital in such securities as were most profitable, and to distribute all the profits of its business amongst its shareholders.

Under the inducements offered by the Enabling Act, it relinquished these advantages, and assumed the obligations and restrictions of the National Bank law, amongst which was the investment in government bonds of one-third of its capital, and a reservation, equal to one-fifth of its capital, from the yearly earnings.

The assumption of these obligations, and the investment of capital, in accepting the terms of the law, were a consideration quite sufficient to establish a binding contract either between individuals, or between a State and its citizens.

In the Piqua Bank case, this Court, in discussing what amounts to a sufficient consideration for a legis-

lative contract, says, as follows, p. 380, "Every valuable privilege given by the charter which conduced to an acceptance of it, and an organization under it, is a contract which cannot be changed by the Legislature where the power to do so is not reserved in the charter."

Again, page 390: "Much stress was laid on the argument, and in the discussion of the Supreme Court on the fact that the banks paid no bonus for their charter, and that no contract can be binding which is not mutual. This is a matter which can have no influence in deciding the legal question. The State did not require a bonus, but other requisitions are found in the charter which the Legislature deemed sufficient, and this is not questioned by any other authority. The obligation is as strong on the State from the privileges granted and accepted, as if a bonus had been paid."

Fifth.

The Enabling Act was not a measure of general or public legislation, but a private law relating exclusively to certain banking corporations existing in the State of New York. Its object was to invite investments in particular descriptions of property for the benefit of the State.

It was, therefore, clearly within the class of laws in which, according to the distinction made in People *vs.* Roper, an exemption from tax would not be repealable.

It was more private in its character than a general banking law, or a general law for the formation of corporations, and yet these acts have been held to be private acts, and the privileges granted by them not subject to repeal.

In Gordon *v.* Tax Court, the exemption sustained as

irrepealable was contained in a statute offering certain immunities to such banks in Maryland as should comply with it terms and conditions.

In the Piqua Bank case the exemption was in a general banking law, and was held repealable by the State Courts, on the ground that the act was of general and public legislation. But this court reversed that decision, saying, "The Act of 1845 is a general law only in the sense that all banking associations are permitted to organize under it, but the act is as special to each bank as if no other institution were incorporated by it. We suppose this cannot be controverted by any one. This view is so clear in itself that no illustration can make it clearer."

In Jefferson Bank *v.* Skélly, the exemption was also in a general banking law.

Sixth.

It is submitted that the Court of Appeals erred in supposing that the clauses in the Enabling Act relating to taxation of shares, had been declared void by the decision of this court in Van Alen *vs.* Assessors, and People *vs.* Com'rs.

Van Allen *vs.* Assessors is the only case in which the legality of the law was considered.

Mr. Justice Nelson, in delivering the opinion, says, p. 581: "The decree of the Court of Appeals, from which this case comes to us, must be reversed, on the ground that the Enabling Act of the State of New York, passed March 9, 1865, does not conform to the limitation prescribed by the 41st section of the Act of Congress, passed June 3, 1864, organizing the National Banks, and providing for their taxation. The defect is this: One of the limitations in the Act of Congress

is, 'that the tax so imposed under the laws of any State upon the shares of the associations authorized by this act, shall not exceed the rate imposed upon the shares of any of the banks organized under the authority of the State where such association is located.' The Enabling Act of the State contains no such limitation. The banks of the State are taxed upon their capital; and although the act provides that the tax on the shares of the National Banks shall not exceed the par value, yet, inasmuch as the capital of the State Banks may consist of the bonds of the United States, which are exempt from State taxation, it is easy to see that this tax on the capital is not an equivalent for a tax on the shares of the stockholders."

"This is an unimportant question, however, as the defect may be readily remedied by the State Legislature."

This language does not express or imply any doubt as to the entire legality of each and every clause in the act. The objection made to it is want of conformity with the Act of Congress, not because of the inconsistency of its provisions, but because of the omission of a clause necessary to make it fully operative.

The amendment required by Mr. Justice Nelson to make the law conformable to the Act of Congress, was obviously an insertion of the omitted clause, but if the other clauses had been unconstitutional, such an amendment could not have given them validity.

The legality of the clause restricting taxation to par value is practically conceded by the intimation of the learned Justice that only its limited operation prevented it from being an adequate substitute for the clause omitted.

The question at issue in the case cited was not the validity of all or any parts of the Enabling Act as it stood, but the right of the State to impose taxes to the full limit which the text of that act would permit.

The express repeal subsequently made of this 10th section of the act shows that its effect and operation

could not have been terminated by the decision referred to.

Seventh.

It has been objected that the provision limiting "taxation to the par value" applies only to the tax, and not to the assessment, or that the assessment is unlimited, provided the tax calculated on the assessment is not more than the par value of the shares.

Such a construction violates the clear intention of the clause.

The restriction must have been intended to protect the banks against some tax, the imposition of which was supposable, but a tax equal to the nominal capital of the bank would be confiscation, and could not be supposed to be a measure against which protection was necessary.

The word "exceed" means "go beyond," and the proviso means that the tax shall not go beyond or cover more than the par value of the shares.

That the provision was intended to limit the assessment is confirmed by the preceding clause of the section which limits the rate to the same as imposed on moneyed capital. The word rate in this clause means the percentage imposed on the assessed value; it is, in fact, the tax itself. If, then, the clause limiting to the par value applies to the tax only, there are two clauses limiting the tax, and none limiting the assessment, which is the most important subject of the two.

Eight.

The tax law of 23d April, 1866, under which the tax is imposed, is therefore illegal, because it repeals the provision of the Enabling Act limiting the taxation of shares, and thus violates a contract.

Ninth.

The decisions heretofore made, both in the State of New York and by this court, have not held contrary to the principles above contended for.

It has been decided that national banks may be taxed in excess of their par value, but no case has been cited to the effect that they are taxable beyond par, when such taxation is not imposed to the same extent on the State banks, or when, by the State law under which they are organized, the taxation is limited to the par value.

In Hepburn *vs.* School Directors, 23 Wallace, 480, the tax objected to was in Pennsylvania, where there is no statutory limitation similar to that in the New York Enabling Act, and, consequently no violation of contract was or could have been alleged.

The question, depending exclusively on a statute of New York, could not have been raised by any cases of banks organized in other States.

Nor has it arisen before in New York, because until the year 1876 the assessing boards have not assumed to tax these shares in excess of their par value.

The increase of assessment now contended for was first suggested to the Commissioners by the decision of the Supreme Court in The People *v.* Assessors of Albany, 2 Hun., 583.

But this case presented no question as to the ap-

plication or effect of any part of the enabling act, nor did it appear that either one of the banks involved in the controversy was organized under that act, or entitled to avail itself of the provision referred to.

The proceeding had for its sole objection the reduction of tax imposed on the National Exchange Bank to a proportionate equality with that imposed on the Merchants' and Farmers' Bank, the court held that this could not be done without reforming the entire tax levy for the county, and that this was impracticable, because not within the scope of the application. The further decision by the court that both banks were under-taxed, was of a point not argued or necessary to be decided.

Tenth.

The tax imposed is illegal, as being in effect a tax not upon the value of the shares, but upon a sum equivalent to the capital and surplus.

2 Wall., 200, Bank Tax case.

It appears by the Commissioners' return to the writ, that they took $64 as the value of each share, not upon their own estimate, but upon the President's statement, showing that the capital and surplus amounted to within a trifle of this sum, and that the value of the shares *did not exceed it.*

This valuation was clearly illegal, as a tax on the property of the bank.

If these shares were taxable to the extent claimed by the commissioners, the assessment was, nevertheless, illegal, as not being made in the way prescribed in the revised statutes.

If the repeal of the clause in the enabling act were valid and effectual, then the shares should have been assessed at their full and true value, as they would be

appraised in payment of a just debt from a solvent debtor.

The valuation here required is not the aggregate of property owned by the bank, nor is it necessarily even the market value of the shares, for this would not govern the appraisement, because a creditor would not get the market value of property set over to him without he had the means to dispose of it to advantage.

If the commissioners had been silent as to the mode in which they have made their assessment, it might possibly be presumed that they had followed the legal method.

But this presumption is not admissible, for they show in the return that they have followed an entirely different rule.

Eleventh.

The Tax law of 23d April, 1865, imposes a heavier burden on the National than on the State banks.

It establishes the same rate on both, without allowance for their difference of organization.

The National Banks being obliged to retain a surplus of one-fifth of their nominal capital, are subjected to a tax from which the State banks, not being hampered by a similar obligation may exempt themselves.

The reserve of National Banks is not a proper subject of taxation because of any supposed equivalent benefit derived from the possession of it. The capital of a bank brings directly no greater income than the same fund invested by the individual shareholders. Its profits are from deposits, and the amount of deposits does not necessarily increase in the same ratio with the surplus.

In fact, many of the banks in New York are reducing their capital, and as a general rule the National Banks could distribute their entire surplus beneficially to their own business and profitably to their shareholders.

Twelfth.

This discrimination between the National and the State banks, so much to the injury of the former, would be illegal, even if it were not within any express prohibition of law.

The National Banks are important financial agents of the General Government, and they might be exterminated and destroyed by the exercise of an unlimited power of taxation.

They are not, therefore, taxable by the State, except by permission of Congress.

And if Congress had given such permission in general terms, without the restrictions contained in the statute, these restrictions would necessarily be implied, otherwise the permission to tax would be practically permission to exclude or destroy.

A system of unequal taxation is illegal on the same principle, as any other State legislation which obstructs the agencies or functions of the General Government.

4 Wheat. 316, McCullough *v.* Maryland.
2 Peters, 449, Weston *v.* Charleston.

Thirteenth.

The tax does in fact violate the clauses, both in State law and in the Act of Congress, prohibiting unfavorable discrimination against national banking associations.

The reference, in the Act of Congress, to State banks, clearly indicates that the danger against which it was intended to provide was a mode of taxation which might impose an unequal burthen on the national banks, and thus disable them from holding their ground against the competition of the others.

The States had financial interests which might at some time incline them to encourage their own institutions, whose capital was available to the accommodations of the States themselves and their citizens: so on the other hand, the same interest would induce discouragement of the banking associations which were organized with the avowed purpose of diverting capital to the uses and purposes of the general government.

For these reasons Congress was careful to cut off the possibility of such action, by inserting the express provision against taxation at a higher rate than was laid on the State banks, although the prohibition might be implied in the clause limiting taxation to the same rate as individuals.

This prohibition was included in the State law.

It is submitted, therefore, that every mode of taxation which imposes a burthen on the national banks, which is not imposed in an equal measure on the State banks, is a violation of the spirit and intention of the Act of Congress, and of the State law, and consequently illegal.

Fourteenth.

The prospect of this accumulation of surplus by the National Banks, is the only assignable reason for insertion in the enabling act of the clause restricting taxation to par value.

This clause is a substitute for the clause in the act of Congress forbidding taxation at a higher rate than State Banks.

It was well known that State Banks were not under obligation to reserve a surplus, and it was easy to foresee that a mere repetition of the clause in the act of Congress requiring the same rate to be imposed on both classes of banks might leave open the question now presented of taxing surplus, and its unequal bearing on the different institutions.

Fifteenth.

But the tax is contrary to the letter as well as spirit of the statutory prohibitions.

The relators being assessed at a premium of $14 per share, or 28 per cent. above par, are certainly taxed at a higher rate than the State banks, who having no surplus, are taxed at par.

A justification of this inequality is attempted on the ground that the surplus of the National Bank is to be included in the assessment as part of the actual value of the shares.

But if, as has been shown, the surplus does not properly come into the taxable valuation, then these shares are to be valued at par, and the valuation at 28 per cent. premium is taxing them at a higher rate than the shares of State banks; and a violation of the

statute, even if construed within the most restricted meaning of its language..

Sixteenth.

The judgment below should, therefore, be reversed, and the tax reduced to the par value of the shares.

D. D. Lord,
For Relator's, Appellants.

Supreme Court of the U. S.

No 965 March Term, 1877.

THE PEOPLE OF THE STATE OF NEW YORK
EX REL:
THE GALLATIN NATIONAL BANK,
Plaintiff in Error,

against

THE COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY OF NEW YORK,
Defendants in Error.

Brief for Defendants in Error.

WM. C. WHITNEY,
Counsel to the Corporation of the City of New York.

HUGH L. COLE,
Of Counsel.

NEW YORK.
1877.

Supreme Court

OF THE UNITED STATES.

On Appeal from the Court of Appeals of the State of New York.

THE PEOPLE EX REL., THE GALLATIN NATIONAL BANK,
Appellants,

against

THE COMMISSIONERS OF TAXES AND Assessments of the City of New York,
Respondents.

Statement and Points in behalf of Respondents.

STATEMENT.

This is an appeal by the relator from an order of the Court of Appeals of the State of New York confirming an order of the Supreme Court of that State, dismissing a writ of *certiorari* which had been granted for the purpose of reviewing the proceedings of the Commissioners of Taxes and Assessments of the City of New York, in and about the valuation for the purposes of taxation of the shares of the capital stock of the Gallatin National Bank.

The relator is a national bank organized under the provisions of the act of Congress of June 3, 1864, commonly known as the "Banking Act," and of Chapter 97 of the Laws of 1865, of the State of New York, commonly known as the "Enabling Act."

The respondents are charged by the Laws of the State of New York with the duty of ascertaining the value for purposes of taxation of the shares of the stock of said bank, and of assessing the same upon the stockholders therein. But it is no part of the duty of the respondents to fix the amount of tax which shall be chargeable upon these shares, or the rate or percentage of such tax.

The several statutes which prescribe the duty of the respondents in the premises require that they shall assess and tax "the stockholders of the bank on the value of their shares of "stock therein" (Laws of N. Y., 1866, v. II, p. 1,647), and at their "full and true value as they would appraise the same "in payment of a just debt due from a solvent debtor" (1 Rev. Stat., N. Y., 393, § 17), but that they shall deduct from the value of the shares so ascertained the proportionate value of the real estate of the bank (chap. 761, Laws N. Y., 1866).

Relators' President made a sworn statement that "the value "of each share of this bank did not * * exceed sixty-four "dollars per share." The par value of a share is fifty dollars; the whole number of shares is 30,000, and the total amount of the real estate is $150,000.

From these *data* the respondents assumed that the gross value of a share was $64; they then ascertained that the proportionate value of the real estate to be deducted from each share was $5, after deducting which, the taxable value of each share was found to be $59, and at that sum it was assessed.

The relators, however, claimed that the "shares should not "be taxed in excess of their par value," and in support of that claim assigned three reasons: (1), that the Enabling Act (chap. 97 of the Laws of 1865), provided that there should be no taxation beyond the par value of the shares; (2), because by law the bank is compelled to keep a certain amount of its capital in United States bonds, and also to keep a certain reserve out of its earnings, which bonds and which reserve, if de-

ducted from the total capital, would reduce the value of the shares below par, and (3), because, as State banks, unlike national banks, are not required, in New York, to keep any part of their funds in United States securities, nor to provide for any reserve, that to tax the national banks upon their capital, without deducting these elements, is in effect to tax national banks "at a greater rate than other moneyed capital in the hands of individuals of this State," contrary to the statute.

Point I.

The actual value and not the par value, where the two do not coincide, is the standard to be adopted by the Commissioners of Taxes in valuing, for the purposes of taxation, the shares of the capital stock of a national bank.

The provisions of the National Banking Act (Ch. 106, Laws 1864, sec. 43, U. S. Stat. at L., vol. 13, p. 112) relative to State taxation, are as follows:

"*Provided*, That nothing in this act shall be construed to "prevent all the shares in any of the said associations, held "by any person or body corporate, from being included in the "valuation of the personal property of such person or corpo- "ration in the assessment of the taxes imposed by or under "State authority at the place where the bank is located, and "not elsewhere, but not at a greater rate than is assessed upon "other moneyed capital in the hands of individual citizens of "such State: *Provided further*, That the tax so imposed under "the laws of any State upon the shares of any of the associa- "tions authorized by this act shall not exceed the rate imposed "upon the shares in any of the banks organized under author- "ity of the State where such association is located: *Provided*, "*also*, That nothing in this act shall exempt the real estate of "associations from either State, county or municipal taxes, to

" the same extent, according to its value, as other real estate is " taxed."

This act was passed June 3, 1864.

The Legislature of the State of New York, on March 9, 1865, passed an act entitled " An Act, enabling the banks of this " State to become associations for the purpose of banking un- " der the Laws of the United States."

Section 10 of that act is as follows :

" § 10. All the shares in any of the said banking associations, " organized under this act, or the act of Congress * * held " by any person or body corporate, shall be included in the " valuation of the personal property of such person or body cor- " porate or corporation, in the assessment of taxes in the " town or ward where such banking association is located, and " not elsewhere, whether the holder thereof reside in such town " or ward or not; but not at a greater rate than is assessed " upon other moneyed capital in the hands of individuals of " this State, provided that the tax so imposed upon such shares " shall not exceed the par value thereof; and provided fur- " ther, that the real estate of such associations shall be subject " to State, county or municipal taxes to the same extent, ac- " cording to its value, as other real estate is taxed."

At the time of the passage of this act the *shares* of State banks in the State of New York were not subject to any tax, although the *capital* of such banks was taxed.

Upon an examination of this statute this honorable court held that " the Enabling act of the State of New York, passed " March 9, 1865, does not conform to the limitations presented " by the forty-first section of the act of Congress, passed June " 3, 1864, organizing the nationl banks, and providing for their " taxation." And the defect was declared to be that, as the act of 1865 provided for the taxation of the shares of the stock of national banks, while there was no provision of law in New York for the taxation of the shares of banks organized under the authority of the State, the State law was not in conformity with the United States law, and therefore void.

Van Allen v. *The Assessors*, 3 *Wall.* 573 (*Dec.*, 1865).

On the 23d of April, 1866, the Legislature of the State of New York passed another act (chap. 761, Laws 1866), expressly repealing section 10 of the Enabling act of 1865, which this court had already declared void, and providing as follows:

"SECTION 1. No tax shall hereafter be assessed upon the cap-
" ital of any bank or banking association organized under the
" authority of this State, or of the United States, but the stock-
" holders in such banks and banking associations shall be as-
" sessed and taxed *on the value of their shares of stock therein;*
" said shares shall be included in the valuation of the personal
" property of such stockholders, in the assessment of taxes at
" the place, town or ward where such bank is located * *
" but not at a greater rate than is assessed upon other moneyed
" capital in the hands of individuals in this State." "And in mak-
" ing such assessments there shall be deducted from the value
" of such shares such sum as is in the same proportion to such
" value, as is the assessed value of the real estate of the bank
" or banking association * * to the whole amount of the
" capital stock of said bank or banking association."

The general law of the State of New York provides: "All
" real and personal estate liable to taxation shall be estimated
" and assessed by the assessors at its *full* and true value as
" they would appraise the same in payment of a just debt due
" from a solvent debtor."

It, therefore, was the plain duty of the respondents to disregard the *par* value of the shares and to ascertain, after eliminating therefrom the element derived from the real estate of the bank, the full and true value of the shares, and to assess them for taxation accordingly, and this the respondents did.

This precise question has been recently passed upon by this court in "*Hpeburn* v. *The School Directors*," 23 *Wall.*, 481.

The *Chief Justice* in delivering the opinion of the court says:

"The most important question presented by the assignment
" of errors is, whether shares of stock in a national bank can
" be valued for taxation by the State in which the bank is lo-
" cated at an amount exceeding their par value."

"The money of the bank is put out" (at interest) and the

"share of the shareholder represents his proportion of that "money. What the amount of this share is must, in some form, "be ascertained in order to determine its taxable value. If the "nominal or par value of the stock necessarily indicated this "amount, there might be some propriety in making that the tax-"able value; but, as all know, such is not the case. The avail-"able moneyed capital belonging to a bank may be *diminished* "*by losses or increased by accumulated profits.* Therefore some "plan must be devised to ascertain what amount of money at "interest is actually represented by a share of stock. The "State of Pennsylvania has taken care that this may be done "by an official appraisement" (with certain safeguards).

"There certainly is no apparent injustice in this. *It is not* "*the amount of money invested which is wanted for taxation, but* "*the amount of moneyed capital which the investment represents for* "*the time being.*"

"If the value set upon the share does not exceed this amount "it will not be assessed at a greater rate than other money at in-"terest." The opinion concludes that the plaintiff had no "right "under the act of Congress to limit the power of assessment "to the par value."

This case arose under a statute of the State of Pennsylvania, but a comparison of that statute with the statute of New York will show conclusively that the principle laid down by the court is entirely applicable to the case at bar.

The General Term of the Supreme Court of the State of New York for the Third Department has also recently adjudicated this precise point.

The case was one in which the assessors valued the shares of a national bank at par when their actual value was above par. The court says: "It is, we think, entirely plain that the basis "of assessment against the owners of shares of stock of the "banks, as certified to us by the Board of Assessors in answer "to the writ in this case is erroneous. The assessments have "not been made against the shareholders '*on the value of their* "*shares of stock*' as the law requires (chap. 761, Law of 1866), "but were made, as the fact is certified in the return, at par "value without regard to the true value in excess of par

" Such basis of assessment was in manifest disregard of the " plain directions of the statute."

People *v.* The Assessors of Albany, 2 Hun., 583 (1874).

In the present case the General Term of the Supreme Court for the First Department says :

" The actual value of the shares of the relator's stock is the " proper standard in assessing the tax to be paid. The par " value does not control (Laws 1860, vol 2, p. 1,647 ; 1 Rev. " Stat., 393, § 17). It would be the duty, therefore, of the re- " spondents to ascertain and act upon the true value of stock " as they have done. * * * * " The impost may be upon a sum exceeding the par value " when that sum represents the actual value of the share."

The Court of Appeals of the State New York, in reviewing this decision of the Supreme Court, says :

" The assessors, in the discharge of their duty under this " act (chap. 761, Laws of 1866), must ascertain the value of " shares in banks, and to that end they must take into consid- " eration everything that gives value to shares, the surplus, " and the circumstances under whlch it exists, the franchises " and advantages and disadvantages of the bank and all the " other circumstances, and when they thus ascertain the value " of the shares such value is to be the basis of assessment and " taxation. It appears in this case that the defendants as- " sessed the shares in the bank at their value as required by " the statute."

It is contended, in behalf of the relator, that, as the bank was converted from a State bank to a national bank, under the provisions of the Enabling Act of 1865 and before the repeal of Section 10 of that act by the Statute of 1866, there was, in effect, a contract between the bank and the State that the shares of the bank should not be assessed for taxation at more than the par value thereof.

On this point the Court of Appeals says :

" A complete answer to this claim is that the Act of 1865, so

" far as it provided for the taxation of national banks, has been " declared unconstitutional and void (Van Allen *v.* The As- " sessors, 3 Wallace, 573; The People *v.* The Commissioners, " 4 Wallace, 244). Hence, if the Legislature attempted to " make a contract, it failed, and a void law certainly could not " deprive future Legislatures of the right to exercise all their " powers on the subject of taxation of banks. But the act does " not purport to make a contract. It simply enabled State " banks to become national banks and provided, by a general " law, how the bank shares should be taxed. This law the " Legislature could alter, and it was deprived of none of its " rightful power over the subject of taxation. It is never to be " presumed that the State has, by any act, fettered its power " of taxation in the future, unless it appears, with irresistible " clearness, that the enactment was intended in the nature of a " private contract, as distinguished from a mere act of general " legislation (The People *v.* Roper, 55 N. Y., 629; The People " *v.* The Commissioners, 47 N. Y., 501; Rector of Christ " Church *v.* County of Philadelphia, 24 How. U. S., 300). The " Legislature did not, therefore, interfere with any of the con- " stitutional rights of the relators when it enacted, by section " 1 of chap. 761 of Laws of 1866, that 'no tax shall hereafter "' be assessed upon the capital of any bank or banking associa- "' tion organized under the authority of this State or of the "' United States, but the stockholders in such banks or banking "' associations shall be assessed and taxed on the value of "' their shares of stock therein.'"

Point II.

The stockholders of the bank cannot avoid taxation on the actual value of their shares, by the fact that a part or even the whole of the capital of the bank was invested in United States bonds.

Van Allen *v.* The Assessors, 3 Wallace, 573.

The People *v.* The Commissioners, 4 Wallace, 244.

Point III.

The fact that the bank, being a National Bank, was obliged by law to accumulate a reserve, and to keep a portion of its capital invested in United States bonds, and did so, and that State Banks in the State of New York, are not obliged by law to do either of these things, and that the Commissioners included the said reserve and the said United States bonds in their calculation of the value of the shares of the bank, does not show that they "taxed the said stock at a greater rate than is assessed upon other moneyed capital in this State."

In the first place, it is to be observed in this connection that the respondents had nothing whatever to do with fixing the "*rate*" of taxation of the shares of the bank.

Their sole duty was to assess the value of these shares, and the "rate" of taxation was fixed by other officials who have not been made parties to this action, and whose proceedings in the premises cannot be reviewed under the writ of *certiorari* herein.

This court has left no doubt concerning the meaning of the term "rate of taxation," as used in these statutes. In the *People* v. *The Commissioners* (4 Wall., 244), the court says:

"The meaning and intent of the law makers were that "the *rate* of taxation of the shares should be the same, or "not greater than upon moneyed capital of the individual "citizen which is subject or liable to taxation. That is, "no greater *proportion* or *percentage* of tax in the valua- "tion of the shares should be levied than upon other mon- "eyed capital taxable in the hands of the citizens."

Now, in this case, there is no allegation or pretense that a greater "proportion or *percentage* of tax" has been levied upon the value of these shares; but the cause of the objection is that the shares had been valued too high.

But even if the question of the rate of taxation were properly before the court, the relators could not prevail.

The point sought to be made by the relators here was fully considered by this court in the *People* v. *The Commissioners*

(*supra*), where it appeared in the return of the commissioners to the writ of *certiorari*, that in estimating the value of the shares of the bank they made no deduction on account of the investment of the capital of the bank in United States securities; while on the other hand, in the valuation of the personal estate of individuals, these securities held and owned by them were deducted and the tax assessed on the balance; and that like deductions were made from the capital of insurance companies.

From this state of facts, it was argued that the assessment upon the shares of the relator was at a greater rate than that assessed upon other monied capital in the hands of citizens.

But the court decided otherwise.

Upon this point in the case at bar, the Court of Appeals says:

"It is, however, further claimed that there is an unjust "discrimination against national banks because State "banks can divide up all their surplus, and national banks "are required to keep on hand and accumulate a portion "of their surplus. I cannot perceive the force of this "claim. If a State bank divides up its surplus, it has not "got it to use, and it may be taxed in some form in the "hands of the shareholders who have received it.

"While a national bank is required to keep some of its "surplus, and to deposit a certain portion of its capital in "bonds with the Comptroller of the Currency, it can in "certain ways use its surplus, and it receives interest upon "its bonds so deposited, and it has the advantage of a circulation of notes and all the other advantages which the "laws of Congress gave such banks. Who shall say that "a national bank is at any disadvantage as compared with "State banks? It is generally supposed that they have a "substantial advantage over the latter. But however that "may be, all these circumstances were before the defendants when they fixed the value of the shares; and as "long as they did not violate any law, we cannot interfere "with their determination."

Point IV.

The Commissioners have not assessed for taxation the "surplus" or "reserve" of the bank as such. Nor, in fact, is there any such entity as the so-called "surplus" or "reserve," which could possibly be separated, for purposes of taxation, from the other elements which go to make up the value of the shares of the bank.

The assessment is upon the value of the shares of the capital stock, as certified by the president of the bank himself, reduced by deducting from such value the proportionate share of the assessed value of the real estate of the bank.

The said "reserve" is a part of the capital of the bank, and so is the said "surplus," and they are both elements which must be taken into consideration in calculating the value of the shares of stock.

In fact, they are so treated by the president of the bank in his affidavit, upon which the writ in this case issued, and in the several communications to the respondents, which are printed with the return.

The claim that it is this "surplus" or "reserve," and not the "capital" of the bank, which is invested in United States bonds, is an effort to evade the force of the ruling of this Court, in "Van Allen *v.* The Assessors," and in "The People *v.* The Assessors" (*supra*), but such claim is baseless, as the "surplus" and "reserve" are but undistinguishable and inseparable part of the capital itself.

The Supreme Court of New York, in considering this point, says: "The respondents, in determining the tax to "be imposed, adopted a standard of value founded upon "the statement of the relator's president, and ascertained "by deducting from such value the proportionate share of "the assessed value of the relator's real estate. The re- "serve, which is a part of the capital of the bank, and the "surplus as well, were properly included in the estimate "of value. Both contributed to the value of the shares,

" and were necessarily, therefore, constituent elements of " such value."

Point V.

The order and the judgment appealed from should be affirmed, with costs.

WILLIAM C. WHITNEY,
Counsel to the Corporation.

HUGH L. COLE,
Of Counsel.
New York, March 9th, 1876.

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SUPREME COURT,

Of the United States.

THE PEOPLE, ex rel GALLATIN NATIONAL BANK, FRED'K D. TAPPEN, and others, shareholders,

vs. No 965

COMMISSIONERS OF TAXES.

ACTS OF LEGISLATURE OF NEW YORK.

Appendix to Brief for Relators.

D. D. LORD,

of Counsel.

NEW YORK:
JOHN HAMILTON, LAW STATIONER AND PRINTER, 52 JOHN STREET.
1877.

U. S. SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* THE GALLATIN NATIONAL BANK,

against

THE COMMISSIONERS OF TAXES AND ASSESSMENTS.

LAWS OF NEW YORK.

Chap. 97.

AN ACT enabling the banks of this State to become associations for the purpose of banking under the laws of the United States.

Passed March 9, 1865.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The assent of the legislature is hereby given to the organization of associations for carrying on the business of banking within this State, pursuant to the provisions of the act of Congress "To provide a national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof." approved June, eighteen hundred and sixty-four; and the provisions of chapter twenty, article three, part first of the Revised Statutes, entitled "Of unau-

thorized banking," &c., shall not apply to the associations formed under or the notes issued in accordance with the act of Congress aforesaid. And the provisions of this act shall be taken and deemed as an amendment of the laws of this State in reference to the business of banking. And every bank organized pursuant to the act of Congress aforesaid within this State, and every bank organized under said act in pursuance of this act, shall be deemed and held to be a banking institution for all financial transactions of the government of this State, and any and all officers thereof, the same as if organized under and in pursuance of the general banking laws of this State.

§ 2. Any bank incorporated or organized by authority of this State, which shall become an association for carrying on the business of banking under the laws of the United States, shall be deemed to have surrendered its charter, if it shall have complied with the requirements of this act; provided, that every such bank shall nevertheless be continued a body corporate for the term of three years after the time of such surrender, for the purpose of prosecuting and defending suits by and against it, and of enabling it to close its concerns, and to dispose of and convey its property; but not for the purpose of continuing under the laws of this State the business for which it was established.

§ 3. When a bank, at a meeting of the stockholders, has voted, by two-thirds its number of shares, to become such association, or its directors have procured in writing the authority of the owners of two-thirds of its capital stock, to make the certificate required therefor by the laws of the United States, or shall, by a vote of the majority of the directors, have decided to make the change authorized in the discretion of such directors, such bank shall be deemed to have decided to become a banking association under the laws of the United

States ; and the cashier shall publish notice thereof for thirty days in such newspaper as the directors may select, and send like printed notice by mail or otherwise to all non-voting or dissenting stockholders, and shall also notify the superintendent of the banking department of this State that said bank has decided to become a banking association under the laws of the United States.

§ 4. In case of a meeting of the stockholders of any such bank as aforesaid, each stockholder shall be allowed to cast one vote for every share of such capital so held by him or her, and may vote by proxy ; and any executor, administrator or trustee holding any such share may vote personally or by proxy without incurring any personal responsibility by said vote.

§ 5. When the charter of any bank is surrendered under the provisons of this act, the members of the board of directors last in office shall continue to be the board of directors of the new association to be formed under the laws of the United States, with power to take all necessary measures to carry out and perfect such organization, by signing the articles of association and the organizing certificate, and adopting such regulations as may be deemed just and proper, and not inconsistent with the act of Congress in relation thereto. They may reduce the capital stock of said bank to its par value, by dividing the surplus among its stockholders, or may retain such portion of such surplus as they may deem necessary ; and in case of an increase of the capital stock, under the provisions of the act of Congress, may charge the shares of such increased capital stock with a like amount, to place the whole of such capital stock on an equality ; and may award such new stock, or such proportion of fractional parts thereof, to such persons as they shall determine are entitled thereto, as provided in their articles of association and in the act of Congress passed in relation there-

to ; provided, however, that new directors may be chosen at such time and in the manner provided in the articles of association and the act of Congress aforesaid.

§ 6. When any bank has decided to become a banking association under the laws of the United States, it shall be the duty of the directors immediately thereafter to proceed to execute and transmit to the comptroller of the currency the proper certificates and other instruments for its conversion into a national banking association under the laws of the United States ; and as soon thereafter as any such bank shall obtain the certificate of the comptroller of the currency authorizing it to commence the business of banking under the laws of the United States, all the assets, real and personal, of the said bank shall immediately, by act of law, and without any conveyance or transfer, be vested in and become the property of the national banking association into which said bank shall have been converted ; and it shall be entitled, on returning the bills of such bank to the banking department of this State, to receive the stocks pledged to secure the redemption of the same, in the like manner as the bank issuing the same is now entitled by law, and shall be subjected to the same rules as State banks in respect to the final redemption of the circulating notes of such State banks so converted into national associations.

§ 7. The plates and dies of any bank so converted into a national association, and now in the banking department of this State, shall be forthwith so obliterated as to prevent all future use of the same, as provided by section five, chapter one hundred and eighty-nine of the laws of eighteen hundred and fifty-seven ; and any use of them in the manufacture of notes or bills shall be punished as a misdemeanor, on conviction, by court having cognizance thereof.

§ 8. Nothing in this act shall be construed as re-

leasing such association from its obligations to pay and discharge all the liabilities created by law or incurred by the bank before becoming such association or any tax imposed by the laws of this State up to the date of its becoming such association, in proportion to the time since the next preceding payment therefor.

§ 9. Any State bank which has, before the passage of this act, become a national association, by complying with the provisions of the act of Congress in relation thereto, shall be entitled to all the benefits and subject to the provisions of this act, the same as if such conversion had been made after the passage of the same ; and may amend or supply any imperfect paper, act or proceeding heretofore taken or omitted, so as to conform the same with the provisions of this act, without invalidating its conversion from a State to a national association heretofore made.

§ 10. All the shares in any of the said banking associations, organized under this act, or the act of Congress mentioned in section one of this act, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate or corporation, in the assessment of taxes in the town or ward where such banking association is located, and not elsewhere, whether the holder thereof reside in such town or ward or not; but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals of this State ; provided, that the tax so imposed upon such shares shall not exceed the par value thereof ; and provided further, that the real estate of such associations shall be subject to State, county or municipal taxes to the same extent, according to the value, as other real estate is taxed.

§ 11. For the purpose of collecting such taxes and in addition to any other law of this State, not in conflict with the Federal Constitution, relative to the payment, imposition or collection of taxes,

it is hereby enacted and declared that it shall be the duty of every banking association organized, or to be organized as aforasaid, to retain so much of any dividend or dividends belonging to any shareholder as shall be necessary to pay any taxes hereby authorized, unless it shall be made to appear to such banking association that such taxes have been paid.

§ 12. This act shall take effect immediately.

Chapter 761.

AN ACT authorizing the taxation of stockholders of Banks, and the surplus funds of Savings Banks.

Passed April 23, 1866.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. No tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this State, or of the United States, but the stockholders in such banks and banking associations shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholder, in the assessment of taxes at the place, town, or ward where such bank or banking association is located, and not elsewhere, whether the said stockholder reside in said place, town or ward, or not, but not at a greater rate than isassessed upon other moneyed capital in the hands of individuals in this State. And in making such assessment there shall also be deducted from the value of such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank or banking association, and in which any portion of their capital is invested, in which said shares

are held, to the whole amount of the capital stock of said bank or banking association. And provided, further, that nothing herein contained shall be held or construed to exempt from taxation the real estate held or owned by any such bank or banking association; but the same shall be subject to State, county, municipal and other taxation to the same extent and rate and in the same manner as other real estate is taxed.

§ 2. Every individual banker doing banking business under the laws of this State, is hereby required to declare upon oath before the assessor the amount of capital invested in such banking business, and each one hundred dollars of such capital for the purpose of this act, and for the purpose of taxation shall be held and regarded as one individual share in such banking business, and and such shares are hereby declared to be personal property. If such banker have partners he shall declare upon oath before the assessor the number of shares held by each of them in such banking business, ascertained as above provided, and the shares so held by any partner shall be included in the valuation of his taxable property in the assessment of all taxes levied in the town, school district or ward where such individual banker is located, and not elsewhere; and such individual banker shall pay the same and make the amount so paid a charge in his accounts with such partners; and if such individual banker have no partners he shall be held to be sole owner of all the shares in such business of banking, and the same shall be included in the valuation of his personal property in the assessment of all taxes levied in the town, school district or ward where his bank is located, and not elsewhere.

§ 3. There shall be kept at all times in the office where the business of such bank or banking association, organized under the authority of this State or of the United States, shall be transacted, a full

and correct list of the names and residences of all the stockholders therein, and of the number of shares held by each; and such list shall be subject to the inspection of the officers authorized to assess taxes during the business hours of each day in which business may be legally transacted.

§ 4. Section five, ten and eleven of chapter ninety-seven of the session laws of eighteen hundred and sixty-five are hereby repealed.

§ 5. When the owner of stock in any bank or banking association organized under the laws of this State, or of the United States, shall not reside in the same place where the bank or banking association is located, the collector and county treasurer shall, respectively, have the same powers as to collecting the tax to be assessed by this act, as they have by statute, when the person assessed has removed from the town, ward or county in which the assessment was made; and the county treasurer, receiver of taxes, or other officer authorized to receive said tax from the collector, may all or either of them have an action to collect the tax from the avails of the sale of his shares of stock, and the tax on the share or shares of said stock shall be and remain a lien thereon till the payment of said tax.

§ 6. For the purpose of collecting such taxes, and in addition to any other law of this State not in conflict with the constitution of the United States, relative to the imposition of taxes, it shall be the duty of every such bank or banking association, and the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholder as shall be necessary to pay any taxes assessed in pursuance of this act, until it shall be made to appear to such officer that such taxes have been paid.

§ 7. The privileges and franchises granted by the legislature of this State, to savings banks or institutions for savings are hereby declared to be

personal property and liable to taxation as such in the town or ward where they are located, to an amount not exceeding the gross sum of their surplus earned, and in the possession of said banks or institutions, and the officers of such institutions, or banks may be examined on oath by assessors, as to the amount of such surplus; and the property of such banks and institutions shall be liable to seizure and sale for the payment of all taxes assessed upon them for said privileges and franchises.

§ 8. This act shall take effect immediately.